




Agenda Date: _____

Board Briefing Report

DATE: May 5, 2023

TO: Board of Supervisors

FROM: Susan Holt, LMFT, Director, Department of Behavioral Health 
Susan Holt (May 5, 2023 16:25 PDT)

SUBJECT: Senate Bill 1338 - Community Assistance, Recovery and Empowerment Court

EXECUTIVE SUMMARY

The purpose of this briefing is to provide your Board with information regarding Senate Bill (SB) 1338, which passed into law September 14, 2022, known as Community Assistance, Recovery and Empowerment (CARE) Court.

The CARE Court Act establishes a new civil court process designed to connect individuals with specific mental health diagnoses with needed services and support coordinated and/or provided by county behavioral health departments under the oversight of a judge through a one-to-two-year process. The Fresno County Department of Behavioral Health (DBH) will lead the implementation in collaboration with appropriate County Departments and other stakeholders including, but not limited to, the County Administrative Office (CAO), Probation Department, Public Defender, County Counsel, and the Superior Court of Fresno.

SB 1338 requires counties to establish a civil process to compel individuals who have an untreated schizophrenia spectrum or other psychotic disorder diagnosis who are not clinically stable in on-going voluntary treatment to connect with needed services and supports. SB 1338 outlines who may refer to CARE Court, the petition filing process, eligibility criteria for CARE Court, the rights of respondents, and the court process. Individuals eligible for CARE Court are 18 years of age or older, have a severe mental illness and diagnosis of schizophrenia spectrum or other psychotic disorder, are not clinically stabilized in on-going voluntary treatment, are unlikely to survive safely in the community without supervision and/or their condition is substantially deteriorating. The CARE Court process can be initiated through a petition by a county behavioral health petitioner or a non-county behavioral health petitioner such as first responders, family members, public guardian or conservator, hospital director, behavioral health provider, person the respondent lives with, the respondent, and others. Regardless of who initiates the process, DBH is a mandatory party to the petition. Once an individual voluntarily accepts involvement or is ordered by a judge to engage in CARE Court, a Care Plan is developed.

Care Plans are to be jointly developed by DBH with the respondent, their counsel or legal aid, and their supporter (if applicable) then adopted for the respondent with the approval of the judge via a court order. The duration of the Care Plan will not exceed one year. Elements of the Care Plan include, but are not limited to, mental health treatment, housing, and other support services. Care

Plan behavioral health treatment services are limited to those funded through Medi-Cal behavioral health, 1991 Realignment, 2011 Realignment, Mental Health Services Act (MHSA), and private insurance. County behavioral health agencies are responsible for conducting clinical evaluations as ordered by the court and implementing Care Plan services agreed upon by participants and ordered by the court.

Status review hearings will be held at least every 60 days and a one-year status hearing will be held in the 11th month of the CARE Court process. Not fewer than five court days prior to each status hearing, DBH shall file a report to the court and shall serve the report to respondent and respondent's counsel/legal aid and supporter. The report shall include the following information:

- Progress the respondent has made on the Care Plan
- Identify services and supports provided and not provided
- Any issues the respondent expressed or exhibited in adhering to the Care Plan
- Recommendations for changes or next steps

At an evidentiary hearing, the respondent shall have the right to call witnesses and present evidence as to whether the respondent agrees with the report. At the one-year status hearing, the respondent may request either to be graduated from the program or to remain in the program. If the respondent elects to be graduated from the program, the court shall order the county behavioral health agency and the respondent to work jointly on a graduation plan. The court shall schedule a hearing in the 12th month after adoption of the Care Plan for presentation of the graduation plan. If the respondent elects to remain in the CARE Court program, respondent may request additional time, up to one year. The court may order involuntary reappointment for up to one year.

The Department of Health Care Services (DHCS) is directed to provide training and technical assistance to county behavioral health agencies and counsel. The Judicial Council is directed to provide training and technical assistance to judges and support the implementation of the CARE Court process (W&IC 5982).

POLICY CONSIDERATIONS:

Statutes and regulations set forth in Senate Bill 1338 (Umberg) Community Assistance, Recovery and Empowerment (CARE) Court Program.

HISTORY/STATUS:

Senate Bill 1338 (Umberg) *Community Assistance, Recovery and Empowerment (CARE) Court Program* became law on September 14, 2022. This law directs counties in California to develop a new civil process to assist persons with schizophrenia spectrum disorders and other psychotic disorders. SB 1338 identifies who may file a petition, the elements of the petition, eligibility for the CARE Court process, the respondent's rights including the right to be represented by counsel during all CARE Court proceedings, outlines the court process including specific timeframes for hearings (initial, case management, clinical evaluation, care plan, status review, and participation extension), and offers the respondent the opportunity to engage with CARE Court voluntarily. Services identified in the respondent *Care Plan* are to be implemented by DBH including, but not limited to, *behavioral health care, medication stabilization, housing, and other supports*. SB 1338 CARE Court Act directs DHCS to provide optional training to volunteer supporters in the CARE Court process whose role is to support the respondent throughout the court process. In addition, DHCS shall provide training and technical

assistance to DBH, and counsel regarding CARE Court process and Care Plan services and supports. The Judicial Council, in consultation with DHCS and other relevant stakeholders, is directed to provide training and technical assistance to judges to support the implementation of the CARE Court program process.

Local Government Accountability:

- If, at any time during the CARE Court process, the court finds that the county or other local government entity is not complying with court orders, it shall issue an order to show cause. The court may impose a fine for substantially failing to comply with orders and persistent non-compliance may result in appointment of a special master to secure court-ordered care for the respondent at the local government entity's cost.
- Annual CARE Court Act reporting:
 - In consultation with stakeholders, DHCS shall develop an Annual Care Court Act Report. County behavioral health agencies and any other state and local government agency as identified by DHCS shall provide data related to the CARE Court Act participants, services, and supports to DHCS.
 - In consultation with the Judicial Council, DHCS shall develop an annual reporting schedule for the submission of CARE Court Act data from the trial court.

FISCAL IMPLICATIONS:

Per Behavioral Health Information Notice (BHIN) 22-059, DHCS has identified \$485,044 in startup funds for Fresno County to support planning/preparation activities, including, but not limited to, hiring, training, and development of policies and procedures, and to support information technology infrastructure costs, including, but not limited to, changes needed to electronic medical record systems, changes to collect needed reporting data, and case tracking and new billing processes to bill commercial plans. The identified funds exclude capital expenses. In addition, the CARE Court Act amends Welfare and Institutions Code (W&IC 5813.5) by adding to the County plans required under Mental Health Services Act (MHSA) the ability to expend funds on services related to the CARE Court Act. This will allow the County to draw on MHSA funds for this undertaking.

Per California Behavioral Health Director's Association (CBHDA), additional funding was allocated separately to support other State and local entities, including courts:

- *Court funding:* \$3,048,000 for the Judicial Council; \$2,828,000 appropriated to the trial courts for implementation of CARE Court throughout the court system; \$250,000 to be distributed to the State Bar via the Judicial Council for training and support of legal services projects related to CARE Court.
- *State Health and Human Services funding:* \$20 million (\$14 million authorized for consulting) for DHCS to provide technical assistance to implementing counties; \$5 million to Health and Human Services Agency for CARE Court implementation.
- *Legal Aid/Public Defenders:* SB 1338 directs Legal Aid organizations to provide legal representation to respondents. If no legal aid attorney is available, the respondent may be represented by a public defender or private counsel. The enacting legislation directs the Legal Services Trust Fund under the State Bar to fund their legal representation.

INTERESTED COMMUNITY GROUPS/OTHER PUBLIC AGENCIES:

DBH will engage with other County departments and agencies, such as CAO, Probation, Public Defender, County Counsel, Superior Court, Public Guardian's Office, District Attorney's Office, Department of Social Services, Fresno/Madera Housing Authority, and other stakeholders.

FOCUS OF STAFF ACTIVITY:

The County of Fresno will implement SB 1338 in a manner that is consistent with regulation and serve persons suffering from untreated schizophrenia spectrum and other psychotic disorders in our community with the best care possible and in alignment with DBH's guiding principles. DBH will facilitate cross departmental and other stakeholder collaboration and implementation of the required elements of the CARE Court Act by December 1, 2024, via a project management process. During the development of the CARE Court Act, DBH will update your Board with future Board Briefing Reports.

ALTERNATIVES/OPTIONS:

There is no viable alternative action. The County is required by statute to implement the CARE Court system per SB 1338/CARE Court Act.

ACTION TIMEFRAME:

DBH anticipates initiating the CARE Court program no later than compliance deadline of December 1, 2024, as specified by SB 1338 CARE Court.

CONTACT PERSONS:

For additional inquiries contact *Marcelia Black, LCSW, Deputy Director of Behavioral Health* at (559) 600 - 0680 or via email: mablack@fresnocountyca.gov, or *Stacy VanBruggen, LCSW, Division Manager - Mental Health* at (559) 600-6850 or via email: svanbruggen@fresnocountyca.gov